

State of California

Department of Education

LAST MINUTE MEMORANDUM

DATE: September 8, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Sue Stickel, Deputy Superintendent
Curriculum and Instruction

RE: Item No. 18

SUBJECT: *No Child Left Behind (NCLB) Act of 2001: Title IX Persistently Dangerous Public Elementary and Secondary Schools: Approve 15-day comment period for proposed Title 5 regulations with revisions*

Agenda Item No.18 recommends that the Board approve a 15-day public comment period for proposed regulations defining a “persistently dangerous” school. Attachment A is an *Economic and Fiscal Impact Statement* which should be considered along with that agenda item. The impact statement concludes that the currently proposed regulations for defining a “persistently dangerous” school do not constitute a state mandated local cost, because the regulations are implementing a federal mandate.

Attachment A: Economic and Fiscal Impact Statement (10 Pages)
(This attachment is not available for viewing on the Internet. A printed copy is available for viewing in the State Board of Education office.)

Attachment 1: Sec. 4112. Reservation of State Funds for SDFS (4 Pages)
(This attachment is not available for viewing on the Internet. A printed copy is available for viewing in the State Board of Education office.)

Attachment 2: Sec. 9532. Unsafe School Choice Option (2 Pages)
(This attachment is not available for viewing on the Internet. A printed copy is available for viewing in the State Board of Education office.)

Attachment 3: Proposed Title 5 Regulations (4 Pages)

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 11. Special Programs

Add Subchapter 23, Sections 11992, 11993, and 11994 to read:

**Subchapter 23. Defining Persistently Dangerous Public Elementary and Secondary
Schools**

§ 11992. Provisions.

(a) A California public elementary or secondary school is “persistently dangerous” if, in each of three consecutive fiscal years, one of the following criteria has been met:

(1) For a school of fewer than 300 enrolled students, the number of incidents of firearm violations committed by non-students on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b) is greater than three.

(2) For a larger school, the number of incidents of firearm violations committed by non-students on school grounds during school hours or during a school-sponsored activity, plus the number of student expulsions for any of the violations delineated in subsection (b) is greater than one per 100 enrolled students or a fraction thereof.

(b) Applicable violations include:

(1) Assault or battery upon a school employee (Education Code Section 48915(a)(5));

(2) Brandishing a knife (~~Section~~ Education Code Section 48915(c)(2));

(3) Causing serious physical injury to another person, except in self-defense (Education Code Section 48915(a)(1));

(4) Hate violence (Education Code Section 48900.3);

(5) Possessing, selling or furnishing a firearm (Education Code Section 48915(c)(1));

(6) Possession of an explosive (Education Code Section 48915(c)(5));

(7) Robbery or extortion (Education Code Section 48915(a)(4));

(8) Selling a controlled substance (Education Code Section 48915(c)(3)); and

(9) Sexual assault or sexual battery (Education Code Section 48915(c)(4)).

(c) In instances where a student ~~has~~ committed a violation ~~enumerated in subsection (b) for which expulsion proceedings would have been instituted, in subsection (b), but is no longer a student and therefore cannot otherwise be expelled, that violation must be~~

reported as a non-student firearm violation in the total number of incidents and expulsions referenced in subsection (a).

NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 48900.3, 48915(a)(1), 48915(a)(4), 48915(a)(5), 48915(c)(1), 48915(c)(2), 48915(c)(3), 48915(c)(4), and 48915(c)(5), Education Code; Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

§ 11993. Definitions.

(a)(f) "Assault" means an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another (California Penal Code Section 240).

(b)(g) "Battery" means any willful and unlawful use of force or violence upon the person of another (California Penal Code sections 242 and 243).

(c)(n) "Controlled substance" means drugs and other substances listed in Chapter 2 of Division 10 of the California Health and Safety Code (commencing with Section 11053).

(d)(e) "Firearm" means handgun, rifle, shotgun or other type of firearm (Section 921(a) of Title 18, United States Code).

(e)(d) "Firearm violation" means unlawfully bringing or possessing a firearm, as defined in subsection (c), on school grounds or during a school-sponsored activity.

(f)(k) "Explosive" means a destructive device (Title 18, Section 921, United States Code).

(g)(e) "Expulsion" means an expulsion ordered by the local educational agency's governing board regardless of whether it is suspended, or modified, or stipulated.

(h)(m) "Extortion" means acts described in California Penal Code sections 71, 518, and 519.

(i)(a) "Fiscal year" means the period of July 1 through June 30 (California Education Code Section 37200).

(j)(t) "Hate violence" means any act punishable under California Penal Code sections 422.6, 422.7, and 422.75).

(k) An "incident" of a firearm violation by non-student(s) for the purpose of Section 11992 is an event on school grounds during school hours, or at a school-sponsored activity, involving a person or persons not enrolled in the school who unlawfully brings or possesses a handgun, rifle, shotgun, or other type of firearm. An event shall be counted as a single incident when it happens at the same time in the same location, regardless of

the number of non-students involved. School site administrators or designees are responsible for documenting the incident and reporting the incident to the local educational agency (LEA) staff who are responsible for collecting expulsion data.

(l)(h) "Knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3 ½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

(m)(b) "Non-student" means a person, regardless of age, not enrolled in the school or program reporting the violation.

(n) "On school grounds" means the immediate area surrounding the school including, but not limited to, the school building, the gymnasium, athletic fields, and the site parking lots.

(o)(l) "Robbery" means acts described in California Penal Code sections 211 and 212.

(p) A "school sponsored activity" means any event supervised by district staff at which students are present, including transportation to and from school.

(q)(i) "Serious physical injury" means serious physical impairments of physical condition, such as loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement (this is the same definition as described in "serious bodily injury" in California Penal Code Section 243(f)(4)).

(r)(e) "Sexual assault" means acts defined in California Penal Code sections 261, 266(c), 286, 288, 288(a), and 289.

(s)(p) "Sexual battery" means acts defined in California Penal Code Section 243.4.

(t)(e) "Enrolled students", for the purpose of subsections 11992(a)(1) and 11992(a)(2), means students included in the most current California Basic Educational Data System (CBEDS) report for the school.

(u) "During school hours" means from thirty minutes before the initial school bell to thirty minutes after the closing school bell.

NOTE: Authority cited: Section 33031, Education Code; Reference: Sections 37200 and 48915(g), Education Code; Sections 11053–11058, Health and Safety Code; Sections 71, 211, 212, 240, 242, 243, 243(f)(4), 243.4, 261, 266(c), 286, 288, 288(a), 289, 422.6, 422.7, 422.75, 518, and 519, Penal Code; 18 USC Section 921; Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.

§ 11994. Data Collection.

Local educational agencies (LEAs) will submit to the California Department of Education (CDE) the number of incidents of non-student firearm violations and-student expulsions violations specified in Section 11992 above for determining persistently dangerous schools. The California Department of Education CDE will use the information collected to determine if a school site meets the criteria in this subchapter. recommend the names of schools that meet the criteria to the California State Board of Education for designation as persistently dangerous. If an LEA contests the CDE's determination that one or more of its schools is persistently dangerous, the LEA may appeal that determination to the State Board of Education based on incorrect data or circumstances that caused the school to be identified as persistently dangerous, but actually increased student and teacher safety at the school.

NOTE: Authority cited: Section 33031, Education Code; Reference: Public Law 107-110, Title IX, Part E, Subpart 2, Section 9532; 20 USC Section 7911.